

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2407

ALLEN J. CUBBAGE,

Plaintiff - Appellant,

v.

WELLS FARGO BANK, N.A., Successor by Merger, Wachovia Bank,
National Association ("Wells Fargo"),

Defendant - Appellee.

Appeal from the United States District Court for the Western
District of Virginia, at Harrisonburg. Michael F. Urbanski,
District Judge. (5:11-cv-00046-MFU)

Submitted: September 28, 2012

Decided: November 5, 2012

Before WILKINSON, NIEMEYER, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Robert L. Sirianni, Jr., BROWNSTONE, P.A., Winter Park, Florida,
for Appellant. Mary Catherine Zinsner, S. Mohsin Reza, TROUTMAN
SANDERS, LLP, McLean, Virginia; Michael E. Lacy, Nicholas R.
Klaiber, TROUTMAN SANDERS, LLP, Richmond, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Allen J. Cubbage appeals the district court's order granting Defendant's motion to dismiss his First Amended Complaint in his civil action for the reasons stated on the record in open court on November 22, 2011. On appeal Cubbage raises two issues: (1) whether the district court erred by dismissing his defamation claim; and (2) whether the district court should have afforded him an opportunity to amend his First Amended Complaint before striking it from the docket. For the reasons that follow, we affirm.

Regarding the defamation issue, we find the claim lacks merit for the reasons stated by the district court. Cubbage v. Wells Fargo Bank, No. 5:11-cv-00046-MFU (W.D. Va. Nov. 23, 2011). Regarding Cubbage's second issue, that the district court should not have dismissed his First Amended Complaint when an amendment may have cured the alleged defects therein, we note that Cubbage failed to file a proper motion seeking to amend his complaint. See Cozzarelli v. Inspire Pharms. Inc., 549 F.3d 618, 630-31 (4th Cir. 2008) (observing that we cannot say that the district court abused its discretion by declining to grant a motion to amend that was never properly filed). Thus, this claim also lacks merit. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED